

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2000-366-A - ORDER NO. 2011-388

MAY 26, 2011

IN RE: Chem-Nuclear Systems, LLC - Application ) ORDER APPROVING  
for Approval of Allowable Costs (1st Filing) ) AND IDENTIFYING  
Application for Adjustment in the Levels of ) ALLOWABLE COSTS  
Allowable Costs and for Identification of )  
Allowable Costs (2nd Filing and After) )

**I. INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Chem-Nuclear Systems, LLC, a subsidiary of Duratek, Inc. (“Chem-Nuclear” or the “Company”), dated September 30, 2010 (the “Original Application”). By its Original Application, Chem-Nuclear sought an adjustment in the levels of certain allowable costs for Fiscal Year 2009-2010, which the Commission had previously identified, and for the identification of allowable costs for Fiscal Year 2010-2011, all of which are associated with the operation of the Company’s regional low-level radioactive waste disposal facility located in the vicinity of Barnwell, South Carolina (the “Barnwell Facility”). The Application was submitted pursuant to the pertinent provisions of the Atlantic Interstate Low-level Radioactive Waste Compact Implementation Act (the “Act”), which is codified as S.C. Code Ann. §§ 48-46-10, et seq. (Rev. 2008 & Supp. 2010). On March 9, 2011, the Company filed and served an Amended Application which proposed certain revisions in the information contained in

the Original Application to reflect the Company's reconciliation of certain issues with the Office of Regulatory Staff ("ORS").

The Act established a comprehensive economic regulatory program and governs the relationship between the State of South Carolina and operators of facilities for the disposal of low-level radioactive waste. Among other things, the Act provides for South Carolina's membership in the Atlantic Interstate Low-Level Radioactive Waste Management Compact Commission (the "Compact Commission"), and authorizes the manner in which South Carolina participates in the Compact Commission with the other two member states, Connecticut and New Jersey. S.C. Code Ann. § 48-46-20 (Rev. 2008 & Supp. 2010).

The Act fixed a schedule of annually declining maximum volumes of low-level radioactive waste that a disposal facility in South Carolina may accept from generators within and without the Compact Commission's member states. S.C. Code Ann. § 48-46-40(A)(6)(a) (Rev. 2008 & Supp. 2010). Starting on July 1, 2008, the Barnwell Facility was limited to accepting waste exclusively from generators in South Carolina, New Jersey, and Connecticut (the three Compact Commission states).

In addition, the Act empowered the South Carolina Budget and Control Board (the "Budget and Control Board") to fix the rates that an operator of a disposal facility in South Carolina may charge generators for disposal of their low-level radioactive waste. The Act fixed fees for various purposes and provided for the disposition of revenues produced by the operation of disposal facilities subject to the Act. The Barnwell Facility is the only disposal facility for low-level radioactive waste in South Carolina.

Under the Act, the Commission has the responsibility to identify the “allowable costs” of a disposal facility operator. S.C. Code Ann. § 48-46-40(B)(1) (Rev. 2008). “Allowable costs” are “costs to a disposal site operator of operating a regional disposal facility,” and they “are limited to costs determined by standard accounting practices and regulatory findings to be associated with facility operations.” S.C. Code Ann. § 48-46-30(1) (Rev. 2008). The Act provides that “allowable costs” expressly include the costs of certain specifically identified activities necessary in the operation of a low-level radioactive waste facility. S.C. Code Ann. § 48-46-40(B)(3)(a) through (n) (Rev. 2008). Section 48-46-40(3) also provides that “allowable costs” include “any other costs directly associated with disposal operations determined by [the Commission] to be allowable.” The Act excludes from identification as “allowable costs” the costs of certain expressly listed activities and “any other costs determined by [the Commission] to be unallowable.” S.C. Code Ann. § 48-46-40(B)(3) (Rev. 2008).

The Act entitles a disposal facility operator to recover an operating margin of twenty-nine percent (29%). This operating margin is authorized for the total amount of all identified “allowable costs,” excluding allowable costs for taxes, licensing, and permitting fees which the operator is required to remit to governmental entities. S.C. Code Ann. § 48-46-40(B)(5) (Rev. 2008).

The level of “allowable costs” and the statutory operating margin affect the amount of annual revenue that a disposal facility operator remits to the State of South Carolina. At the end of the fiscal year, the operator pays the South Carolina Department of Revenue an amount equal to the total revenue that the operator had received for waste

disposal services during the fiscal year, reduced by the operator's identified "allowable costs," and reduced further by the twenty-nine percent (29%) statutory operating margin on the "allowable costs" under the Act, and reduced further by payments that the operator made during the fiscal year for reimbursement of certain administrative costs which the Budget and Control Board, the Commission, the State Treasurer, and the Compact Commission have incurred for the conduct of those agencies' functions in administering the Act. S.C. Code Ann. § 48-46-60(B) and (C) (Rev. 2008).

The Act provides that the operator of a low-level radioactive waste disposal site may apply to the Commission for adjustments in the levels of "allowable costs" which the Commission had identified for the previous fiscal year and for identification of costs which the Commission had not previously identified as "allowable costs." S.C. Code Ann. § 48-46-40(B)(4) (Rev. 2008). Upon disposition of the issues in an application, the Act requires the Commission to authorize the site operator to adjust its "allowable costs" for the current fiscal year to compensate the site operator for revenues "lost" during the previous fiscal year (that is, the difference between the level of "allowable costs" previously identified and the level of "allowable costs" identified upon approval of the application). Id.

Chem-Nuclear filed its Original and Amended Applications in this proceeding seeking to be compensated for the difference between the level of "allowable costs" which the Commission identified in Order No. 2010-435 and the amount of such costs that the Company actually experienced in the Fiscal Year 2009-2010. The Original and Amended Applications also sought identification of the Company's "allowable costs" for Fiscal Year 2010-2011. Chem-Nuclear sought compensation for the Company for those

“allowable costs” incurred in Fiscal Year 2009-2010 where the actual costs were more than those identified and approved in Order No. 2010-435. Amended Application for Fiscal Year 2010-2011, ¶¶ 11-14 and Exhibit A to the Amended Application.

Upon receipt of the Company’s Original Application, the Commission’s Clerk’s Office directed Chem-Nuclear to publish a Notice of Filing, advising the public of the submission of the Original Application and of the manner in which interested persons might intervene or otherwise participate in this proceeding. Chem-Nuclear filed affidavits of publication which demonstrated its compliance with the instructions of the Clerk’s Office.

The Act specifies certain agencies to be parties of record in proceedings for identification of “allowable costs” before the Commission. Those parties are: the Budget and Control Board, the Executive Director of the ORS, and the Attorney General for the State of South Carolina. S.C. Code Ann. § 48-46-40(B)(9) (Rev. 2008). In addition, the Compact Commission and the South Carolina Department of Health and Environmental Control (“DHEC”) have the discretion under the Act to participate as parties. *Id.* Pursuant to the provisions of S.C. Code Ann. § 58-4-10(B) (Rev. 2008), ORS represents “the public interest” in proceedings in this Docket.

On April 13, 2011, the Commission held an evidentiary hearing with respect to the issues in the Company’s Amended Application. The Honorable David A. Wright, Vice Chairman, presided. Josh Minges, Esquire, served as Advisor to the Commission. Appearances were as follows: Robert T. Bockman, Esquire, represented Chem-Nuclear; Jeffrey M. Nelson, Esquire, represented ORS. South Carolina Electric & Gas Company (“SCE&G”) was represented by K. Chad Burgess, Esquire, and Bonnie D. Shealy,

Esquire, appeared on behalf of the Compact Commission. The Budget and Control Board, DHEC, Duke Energy Carolinas and the Attorney General did not appear or participate in the hearing. Progress Energy Carolinas, Inc. (“Progress Energy”), which had intervened and joined in the settlement of the issues in this case, did not appear at the hearing.

Chem-Nuclear, SCE&G, Progress Energy, the Compact Commission and ORS entered into a Settlement Agreement, dated April 6, 2011, by which they resolved various issues raised in the Original Application and during the audit which ORS conducted. The Settlement Agreement was filed with the Commission on April 6, 2011, and was entered in the record of this proceeding as Hearing Exhibit No. 1. The Settlement Agreement includes an Attachment A which consists of the “Examination Report for Docket No. 2000-366-A” (including Exhibits A and AA thereto) prepared by ORS and dated March 16, 2011.

At the hearing, Chem-Nuclear presented the testimony of one witness, James W. Latham, who presented his testimony and answered questions from the Commission regarding the future operation of the Barnwell facility, safety and security issues at the facility, and Chem-Nuclear’s conversion from its previous Costpoint accounting system to the current Oracle accounting system. ORS presented Daniel Sullivan, who, in response to questions from the Commission, confirmed the change in the accounting system and recommended its approval by the Commission. At the conclusion of the hearing, the record remained open for Chem-Nuclear to submit additional information for the Commission’s consideration concerning the newly adopted Oracle accounting system,

to be made a part of the record in this docket as Hearing Exhibit No. 3. Hearing Exhibit No. 3 (JML-2) detailing the cost of the Oracle accounting system was filed with the Commission on April 18, 2011. The record of this proceeding consists of the pleadings, the Commission's notices, the transcript of oral testimony, and three (3) hearing exhibits.

## II. DISCUSSION OF ISSUES

All of the issues relating to the identification of "allowable costs" for Fiscal Year 2009-2010 and for Fiscal Year 2010-2011 were resolved among the parties or were not contested in the evidence or positions of the parties. Consequently, the Commission will discuss the issues in general to reflect our reliance upon the evidentiary record for the findings and conclusions in this order.

### A. "Allowable Costs" for Fiscal Year 2009-2010

In accordance with the provisions of the "Collaborative Review of Chem-Nuclear's Operations and Efficiency Plan" ("OEP"), approved in Order No. 2004-349 for use in these "allowable cost" proceedings, Chem-Nuclear's Original Application and Amended Application separated costs into three (3) categories of costs: fixed, variable and irregular. See Hearing Exhibit No. 2, Amended Exhibit C and Hearing Exhibit No. 1 (ORS Examination Report, Exhibit A). As recognized in Order No. 2004-349, the OEP was valid for use as a "baseline for establishing a method for identifying 'allowable costs.'" Order No. 2004-349, p. 17.

#### 1. Fixed Costs for Fiscal Year 2009-2010

Chem-Nuclear separated its fixed costs for Fiscal Year 2009-2010 into several general categories: labor and fringe costs, non-labor costs, corporate allocation of general

and administrative expense, equipment leases and support, depreciation, and insurance, as well as those fixed costs for which the statutory operating margin was not applicable. The Company's operating expense for that period resulted in total fixed costs of \$2,705,618, which Chem-Nuclear actually incurred. Hearing Exhibit No. 2, Amended Exhibit A, p. 1. Since the total fixed costs incurred for 2009-2010 were greater than the level of fixed costs anticipated in Order No. 2010-435, the Company proposed an adjustment of \$72,955 above the previously identified allowable fixed costs for Fiscal Year 2009-2010. ORS Examination Report, Exhibit A; Hearing Exhibit No. 2, Amended Exhibit A, p. 1. The record supports the identification of \$2,705,618 as fixed "allowable costs" for Fiscal Year 2009-2010.

2. Variable Material Costs for Vaults for Fiscal Year 2009-2010

The actual costs for vaults are predicated on a number of factors, including the size and shape of waste packages and the number and size of vaults required for disposal. (Latham Testimony, p. 12). For Fiscal Year 2009-2010, Chem-Nuclear's actual costs for disposal vaults were \$319,670. Hearing Exhibit No. 2, Amended Exhibit A, p. 3. The evidence supports treatment of that amount of those actual costs as "allowable."

3. Variable Labor Costs and Non-Labor Costs for Fiscal Year 2009-2010

Order No. 2010-435 determined various categories of rates applicable to the following: purchase, inspection and placement of disposal vaults, handling of the various classes of waste shipments, slit trench offload operations, customer assistance, and scheduling of waste shipments and maintenance of disposal records. Hearing Exhibit No. 2, Amended Exhibit A, p. 2. According to the record, the variable Labor and Non-Labor

rates are associated with several independent variables. (Latham, p. 11). The Company incurred actual variable labor and non-labor costs of \$90,798 in Fiscal Year 2009-2010, which the Company has requested to be included in this category of costs for Fiscal Year 2009-2010. Id. The record supports treatment of that amount of those actual costs as “allowable.”

4. Irregular Costs for Fiscal Year 2009-2010

Irregular costs include costs for projects that are nonrecurring annually or varying costs for projects which continue for more than a year. (Latham, p. 13). The record contains descriptions of each project and the actual costs that Chem-Nuclear incurred for them in Fiscal Year 2009-2010. Id.; Hearing Exhibit No. 2, Amended Exhibit B. At the date of the issuance of Order No. 2010-435, not all of the irregular costs for Fiscal Year 2009-2010 were known and measurable. (Latham, p. 14). The evidence here establishes that Chem-Nuclear incurred actual irregular costs for Fiscal Year 2009-2010 of \$1,159,020. Hearing Exhibit No. 2, Amended Exhibit A and Hearing Exhibit No. 1, Exhibit A to Attachment A. Of this amount, \$972,655 was incurred for the disposal of four large steam generators (large components) from one of the Compact Commission utilities in March 2010. Hearing Exhibit No. 2, Amended Exhibit A, p. 4. The record supports treatment of \$1,159,020 of actual costs as “allowable.”

B. Proposed “Allowable Costs” for Fiscal Year 2010-2011

Chem-Nuclear’s Amended Application and the evidence in the record presented “allowable costs” to be identified for Fiscal Year 2010-2011, separated into the three (3) cost categories that were described in the Collaborative Review of the OEP and adopted

in Order No. 2004-349.

1. Allowable Fixed Costs for Fiscal Year 2010-2011

Chem-Nuclear proposed total fixed costs of \$2,757,848 to be identified as “allowable costs” for Fiscal Year 2010-2011. That amount was based on actual fixed costs incurred in Fiscal Year 2009-2010, with appropriate adjustments for inflation as the Commission has previously approved, or was based on actual fixed costs incurred during the months of July 2010 through December 2010, and in anticipation of continuing legal expenses related to the license renewal appeal process. (Latham, p. 14). The total fixed costs for Fiscal Year 2010-2011 include \$207,407, to which the statutory operating margin is not applicable. Hearing Exhibit No. 2, Amended Exhibit C and Hearing Exhibit No. 1, Exhibit AA to Attachment A.

2. Allowable Irregular Costs for Fiscal Year 2010-2011

Chem-Nuclear described general categories of projects with estimated total costs of \$187,654, which it categorized as irregular costs for Fiscal Year 2010-2011. (Latham, p. 14).

3. Variable Material Cost (Vaults) Rates for Fiscal Year 2010-2011

For Fiscal Year 2010-2011, Chem-Nuclear proposed variable material cost rates for each category of waste received based upon the rates which we had approved in Order No. 2010-435 for Fiscal Year 2009-2010, as adjusted for a nominal inflation rate of two percent (2%). (Latham, p. 14).

4. Variable Labor and Non-Labor Rates for Fiscal Year 2010-2011

For Fiscal Year 2010-2011, Chem-Nuclear proposed rates for variable labor and non-labor costs. Hearing Exhibit No. 2, Amended Exhibit C. Those rates pertained to five (5) categories: vault purchase and inspection (per vault); ABC waste disposal (per shipment); Slit Trench Waste Operations (per offload); customer assistance (per shipment); and maintenance of trench records (per container). The rates were based on the rates which we approved in Order No. 2010-435, adjusted for a nominal inflation rate of two percent (2%). Id.

### **III. FINDINGS AND CONCLUSIONS**

1. The Public Service Commission of South Carolina is authorized and directed by S.C. Code Ann. §§ 48-46-40(B), et seq. (Rev. 2008 & Supp. 2010) to identify allowable costs for Chem-Nuclear's operation of a regional low-level radioactive waste disposal facility in South Carolina. The facility is located in Barnwell, South Carolina.

2. Chem-Nuclear has operated the disposal site continuously since 1971 without interruptions. Undisputed amounts in Chem-Nuclear's accounts that will herein be identified and approved by this Commission as "allowable costs" for Fiscal Year 2009-2010 are included in Appendix A, which is attached to this Order.

3. Further, we approve and identify as "allowable costs" for Fiscal Year 2010-2011 the individual figures and the sum of \$2,945,502 in fixed and irregular costs, as reflected in Appendix B, which is attached to this Order.

4. We further approve the variable cost rates for Fiscal Year 2010-2011, as those costs and rates are depicted in Appendix B, which is attached to this Order. The actual expense in the variable cost category will be dependent on the actual volumes and

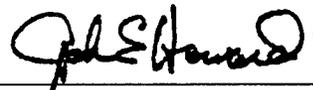
classes of waste received. The rates in Appendix B are appropriately documented and supported by evidence in the record of this proceeding.

5. Finally, we find that the Oracle accounting system, as implemented by Chem-Nuclear, accurately reflects financial transactions and authorize the Company's continued use of this system. In accordance with our previous ruling in Order No. 2001-499, however, we remind Chem-Nuclear that any changes in the Company's accounting system(s) require the prior authorization of this Commission.

6. Chem-Nuclear shall continue to submit monthly reports of variable cost data to the Commission as required by Commission Order No. 2001-499.

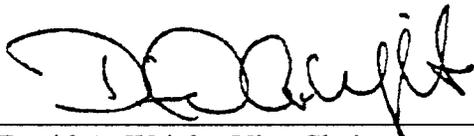
7. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



John E. Howard, Chairman

ATTEST:



David A. Wright, Vice Chairman  
(SEAL)

APPENDIX A – Order No. 2011-388  
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Chem-Nuclear Systems, LLC  
Allowable Costs  
Fiscal Year Ending June 30, 2010

<u>Description</u>	<u>Allowable Cost</u>
<b>Fixed Costs</b>	
Fixed Labor, Fringe and Non-Labor Costs	\$1,344,161
Depreciation	\$65,830
Insurance	\$422,721
Equipment and Leases and Support	\$133,505
Corporate G&A	\$536,061
Legal Support*	\$203,340
	<hr/>
<b>Total Fixed Costs</b>	\$2,705,618
<b>Variable Costs</b>	
Vault Costs	\$319,670
Variable Labor and Fringe**	\$90,798
	<hr/>
<b>Total Variable Costs</b>	\$410,468
<b>Irregular Costs</b>	
<b>Total Irregular Costs</b>	<hr/> 1,159,020
<b>Total Allowable Costs</b>	<hr/> \$4,275,106

\* Not subject to statutory operating margin.

\*\*Categories of costs include: Vault Purchase and Inspection, ABC Waste Disposal, Slit Trench Operations, Waste Acceptance and Trench Records.

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Chem-Nuclear Systems, LLC  
Allowable Costs  
Fiscal Year Ending June 30, 2010

<b><u>Irregular Cost Item</u></b>	<b><u>Labor &amp; Fringe</u></b>	<b><u>Non Labor</u></b>	<b><u>Total Cost</u></b>
Various Trenches	\$2,745	\$71,726	\$74,471
Decontamination and Corrective Actions	\$2,234	\$0	\$2,234
Site Engineering and Drawing Updates	\$1,731	\$606	\$2,337
Site Assessments	\$1,081	\$0	\$1,081
License Renewal and Appeal Costs	\$5,862	\$10	\$5,872
Increased Security Controls	\$0	\$10,846	\$10,846
Severance Pay	\$54	\$62,199	\$62,253
Other Irregular Costs	\$24,191	\$3,080	\$27,271
Large Component Disposal	\$90,063	\$882,592	\$972,655
<b><u>Total Irregular Costs</u></b>	<b><u>\$127,961</u></b>	<b><u>\$1,031,059</u></b>	<b><u>\$1,159,020</u></b>

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Chem-Nuclear Systems, LLC  
Allowable Costs  
Fiscal Year 2010-2011 (Ending June 30, 2011)

<u>Description</u>	<u>Allowable Cost</u>
<b>Fixed Costs</b>	
Labor and Fringe and Non-Labor	\$1,371,044
Depreciation	\$51,668
Insurance	\$431,175
Equipment Leases and Support	\$136,176
Corporate Allocation (Management Fee/G&A)	\$560,378
Legal Support*	\$207,407
Total Fixed Costs	<u>\$2,757,848</u>
<b>Irregular Costs</b>	
Trench Construction	\$98,307
License Appeal	\$10,000
Corrective Action	\$5,000
Increased Security Controls	\$10,000
Site Engineering Drawings	\$3,000
Site Assessments	\$5,000
Severance Pay	\$0
Miscellaneous	\$56,347
Total Irregular Costs	<u>\$187,654</u>
<b>Total Fixed and Irregular Costs</b>	<u>\$2,945,502</u>
<b>Variable Costs</b>	
<b><u>Variable Labor and Non-Labor Rates</u></b>	
Vault Purchase and Inspection (per vault)	\$78.98
ABC Waste Disposal (per shipment)	\$1,892.02
Slit Trench Shipment (Offload)	\$6,830.62
Customer Assistance (per shipment)	\$46.25
Trench Records (per container)	\$126.54
<b><u>Variable Material Costs (Vault Costs)</u></b>	
Class A Waste (per cubic foot)	\$39.81
Class B Waste (per cubic foot)	\$41.25
Class C Waste (per cubic foot)	\$42.13
Slit Trench Waste (per cubic foot)	\$188.23

\* Not subject to statutory operating margin